

1 Stephen J. Kottmeier (State Bar No. 077060)
sjk@hopkinscarley.com
2 Jay M. Ross (State Bar No. 151759)
jross@hopkinscarley.com
3 HOPKINS & CARLEY
A Law Corporation
4 The Letitia Building
70 S First Street
5 San Jose, CA 95113-2406

6 ***mailing address:***

P.O. Box 1469
7 San Jose, CA 95109-1469
Telephone: (408) 286-9800
8 Facsimile: (408) 998-4790

9 Attorneys for Secured Creditor BOSTON PRIVATE
BANK & TRUST COMPANY, formerly known as
10 and successor to Borel Private Bank & Trust
Company
11

12 UNITED STATES BANKRUPTCY COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN JOSE DIVISION

15 In re:
16 272 E. Santa Clara Grocery, LLC,
17 Debtor.

CASE NO. 13-53491

CHAPTER 11

**DECLARATION OF COUNSEL IN
SUPPORT OF EX PARTE APPLICATIONS
FOR ORDERS OF EXAMINATION OF
DEBTOR WITNESSES AND FOR
PRODUCTION OF DOCUMENTS
PURSUANT TO BANKRUPTCY RULE
2004**

22
23 I, Stephen J. Kottmeier, declare:

24 1. I am an attorney at law duly licensed under the laws of the State of California and
25 am admitted to the bar of this Court. I am a shareholder with Hopkins & Carley, a Law
26 Corporation, attorneys of record for Secured Creditor Boston Private Bank & Trust Company,
27 formerly known as and successor to Borel Private Bank & Trust Company ("BPB"). I make this
28

1 declaration pursuant to Bankruptcy Rule 2004 in support of BPB's Ex Parte Applications for
2 orders pursuant to Bankruptcy Rule 2004 for appearance and production of records of Andrew
3 Lewis, Michael Lach, Liesel Ernst, Allyn R. Tognoli, Tina D. Tognoli, Ogen Perry, and Linda
4 Latham (collectively the "Witnesses"), each of whom is listed in the Debtor's Statement of
5 Financial Affairs as a member of Debtor 272 E. Santa Clara Grocery, LLC ("Debtor"). I am
6 informed and believe that Mr. Lewis is also a managing member of the Debtor. The facts stated
7 herein are true based upon my personal knowledge or upon my information and belief based upon
8 our investigation of this matter.

9 2. The underlying facts pertinent to this application are set forth in the Declaration of
10 David Scheiber In Support Of Secured Creditor's Boston Private Bank & Trust Company's
11 Motion Confirming That No Stay Is In Effect With Respect To Rent, filed herein as Docket No.
12 22-2 and 22-3 (Exhibits) and the Court is requested to take judicial notice of that declaration in
13 the Court's records. A true copy of Mr. Scheiber's Declaration is attached to this Declaration as
14 Exhibit 1.

15 3. Based on those facts and the Debtor's schedules and statement of affairs filed
16 herein, BPB is informed and believes that each of the Witnesses has relevant information that will
17 materially aid BPB in its investigation of the Debtor's acts, conduct, assets, liabilities, financial
18 condition and business operations and sources of funds or other resources available to the Debtor
19 for the purpose of consummating a plan. Each of the Witnesses is listed currently as an owner of
20 the Debtor and, according to public records recorded in the Office of the Santa Clara County
21 Recorder, formerly owned an interest in the real property which is identified as the Debtor's
22 principal asset in this case.

23 11. The documents to be produced relate to the property of the bankruptcy estate and
24 the Debtor's financial affairs, as well as its financial condition, business operations and sources of
25 funds or other resources available to the Debtor. These matters may affect the administration of
26 the estate and therefore fall under the proper scope of production of documentary evidence as
27 delineated under Rule 2004(b) of the Federal Rules of Bankruptcy Procedure.

12. On this basis, BPB requests that this Court order each of the Witnesses to appear for examination and to produce documents as indicated in the Ex Parte applications for and order of examination for each of the Witnesses.

13. BPB is serving this Application (by ECF filing and service) upon counsel for the Debtor and the Office of the United States Trustee and upon each of the Witnesses at the address shown for each in the Debtor's Statement of Financial Affairs.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and this declaration was executed on this 24 day of July, 2013, at San Jose, California.

/s/ Stephen J. Kottmeier

Stephen J. Kottmeier